

Doc Code: AP.PRE.REQ

PTO/SB/33 (07-05)

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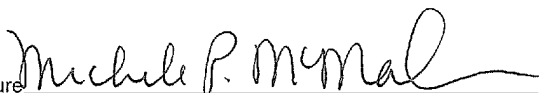
PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

9314-61(U03 0100)

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Typed or printed name

Michele P. McMahan

Application Number

10/757,247

Filed

1/14/2004

First Named Inventor

Daniel P. Homiller

Art Unit

2621

Examiner

Gims S. Philippe

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐

applicant/inventor.

☐

assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

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attorney or agent of record.

Registration number 58,685

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attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34



Signature

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Typed or printed name

919-854-1400

Telephone number

August 27, 2009

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☒

*Total of 1 forms are submitted.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Homiller

Serial No.: 10/757,247

Filed: January 14, 2004

For: MULTIMEDIA DISTRIBUTING AND/OR PLAYING SYSTEMS AND METHODS
USING SEPARATE RESOLUTION-ENHANCING SUPPLEMENTAL DATA

Confirmation No.: 4326

Examiner: Gims S. Philippe

Group Art Unit: 2621

August 27, 2009

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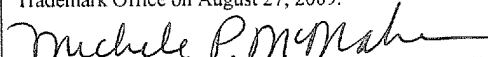
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Michele P. McMahan

**REASONS IN SUPPORT OF APPELLANT'S
PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Sir:

This document is submitted in support of the Pre-Appeal Brief Request for Review (hereinafter, "Request") filed concurrently with a Notice of Appeal in compliance with 37 C.F.R. § 41.31, and in accordance with the rules set out in the Official Gazette of July 12, 2005, for the New Appeal Brief Conference Pilot Program, which have been extended indefinitely. No fee or extension of time is believed due for this Request beyond those that may otherwise be provided for in documents accompanying this paper. However, if any fee or extension of time for this Request is required, Appellant requests that this be considered a petition therefor. The Commissioner is hereby authorized to charge any additional fee which may be required, or credit any refund, to our Deposit Account No. 50-0220.

REMARKS

Appellant hereby requests a Pre-Appeal Brief Review of independent Claims 1, 11, 19, 31, 41, 49, 53, and 60, and dependent Claims 6, 7, 15, 16, 27, 28, 38, 39, 45, 46, 51, 52, 58, 59, 66 and 67, which were finally rejected in the Final Office Action mailed June 9, 2009 ("Final Office Action"). Appellant will show below that, for each of these claims, the cited references simply do not teach or suggest at least one element of the claim, and, thus, a *prima facie* case of obviousness has been not been made. In the interest of brevity, and without waiving the right to argue additional grounds should this Request be denied, Appellant will only discuss arguments related to the

patentability of independent Claims 1, 11, 19, 31, 41, 49, 53, and 60, and the separate patentability of dependent Claims 6, 7, 15, 16, 27, 28, 38, 39, 45, 46, 51, 52, 58, 59, 66 and 67.

Independent Claims 1, 11, 41, and 49 Are Patentable over Chaddha in View of Radha

Claim 1 recites a multimedia distributing method “wherein transmitting multimedia data is performed in real or near real-time, and wherein separately transmitting supplemental data is not performed in real or near real-time” (emphasis added). Claim 11 recites a method of transmitting a multimedia work comprising “streaming by a computer network a first portion of a multimedia work; and downloading by a computer network a second portion of the multimedia work” (emphasis added). Claims 41 and 49 are system claims containing recitations corresponding to those of Claims 1 and 11, respectively, quoted above. Appellant notes that in each of the above-noted claims, the multimedia data (or first portion) and supplemental data (or second portion) are transmitted separately in time, with the multimedia data being transmitted in or near real-time (e.g., streaming), and the supplemental data being transmitted at other than real- or near-real-time (e.g., downloading).

In rejecting Claims 1, 11, 41, and 49, the Final Office Action asserts that Chaddha at column 5, lines 40-41, 57-59, and 62-67 discloses “transmitting multimedia data ... and separately transmitting supplemental data” Final Office Action, page 3. The cited portion of Chaddha, however, makes clear that base layer 260 (which may correspond to Claim 1’s “multimedia data”) and first enhancement layer 340 and second enhancement layer 400 (which together may correspond to the “supplemental data” recited by Claim 1) are encoded together into a single bitstream. Chaddha, column 5, lines 57-59 (“Collectively, layers 260, 340, and 400 comprise the embedded bitstream generated by the scalable video encoder 60.”). Chaddha further expressly states in the Summary of the Invention that the base layer and enhancement layers are transmitted at the same time as a single bitstream – *i.e.*, they are not separately transmitted. Chaddha, column 3, lines 34-37 (“Collectively, the base layer, and first and second enhancement layers comprise the single embedded bitstream that may be multicast over heterogeneous networks that can range from telephone lines to wireless transmission.” (emphasis added)). Chaddha nowhere discloses or suggests that the base layer and the enhancement layer(s) may be transmitted separately in time; indeed, Chaddha’s description of streaming base layer data and enhancement layer data within a single embedded stream actually teaches away from transmitting multimedia data in real- or near-real-time and separately transmitting supplemental data in non-real-time (as recited by Claims 1 and 41), as well as streaming

a first portion of a multimedia work and downloading a second portion of the multimedia work (as recited by Claims 11 and 49). Stated differently, while Chaddha may describe the separate encoding of base layer data and enhancement layer data, Chaddha makes clear that both are transmitted together.

The Final Office Action further cites Radha at column 6, lines 63-67 and column 7, lines 1-12, as “provid[ing] a multimedia distribution method including the step of not performing in real-time or near real-time the separate transmission of supplemental data” Final Office Action, page 4. Appellant respectfully submits, however, that the cited portion of Radha makes clear that the base layer and enhancement layer data are both transmitted at the same time – *i.e.*, they are not separately transmitted:

[U]nder the hybrid structure according to the present invention, the coding of the video signal (both enhancement and base layers) can take place either in real-time ... or off-line prior to the time of transmission. In the second case, the video can be stored and then transmitted (or streamed) at a later time.

Radha, column 7, lines 2-7 (emphasis added). In other words, Radha states that “both enhancement and base layers” may be encoded and transmitted together in real-time, or “both enhancement and base layers” may be encoded off-line, stored, and then transmitted together at a later time. Radha does not disclose or suggest transmitting the base layer data in real- or near-real-time and separately transmitting the supplemental layer data in non-real-time (as recited by Claims 1 and 41), nor does Radha disclose or suggest streaming the base layer data and downloading the supplemental layer data (as recited by Claims 11 and 49). In other words, Radha may describe the separate encoding of base layer data and supplemental layer data, but makes clear that both data layers are transmitted together. Accordingly, Appellant respectfully submits that Radha does not supply the teachings missing from Chaddha, but instead is completely consistent with Chaddha in terms of transmitting both base layer data and enhancement layer data at the same time. Thus, even if one of skill in the art were to combine the teachings of Radha with those of Chaddha, the resulting combination would still fail to disclose or suggest all of the recitations of the present claims.

For at least these foregoing reasons, Appellant respectfully submits that Claims 1, 11, 41, and 49, as well as the dependent claims thereof, are patentable over Chaddha in view of Radha.

Independent Claims 19, 31, 53, and 60 Are Patentable over Chaddha in View of Radha

Appellant respectfully submits that independent Claims 19, 31, 53, and 60, as well as the claims depending therefrom, are patentable for at least the same reasons described herein with respect to Claims 1, 11, 41, and 49. For the sake of brevity, this analysis will not be repeated here.

Many of the Dependent Claims Are Separately Patentable

Appellant respectfully submits that several dependent claims are separately patentable, for at least the additional reasons presented below. For example, Claim 6 recites a method according to Claim 1 “wherein transmitting multimedia data is subject to a first digital rights management scheme; and wherein separately transmitting supplemental data is subject to a second digital rights management scheme that is different from the first digital rights management scheme.” Similar recitations may be found in Claims 15, 27, 38, 45, 51, 58, and 66. Claim 7 recites a method according to Claim 1 “wherein separately transmitting supplemental data is preceded by receiving payment for the supplemental data that is greater than payment that is received for the multimedia data having a first resolution.” Similar recitations may be found in Claims 16, 28, 39, 46, 52, 59, and 67. Appellant notes that although Claim 16 was not specifically rejected, it is included in the discussion below and similarly analyzed.

In rejecting these claims, the Final Office Action relies on Chaddha, column 12, lines 5-18 and 59-67, and column 13, lines 1-4. Final Office Action, page 6. The cited portions of Chaddha, however, relate only to requiring payment from users as a means of determining how scarce network resources will be utilized. *See, e.g.*, Chaddha, column 12, lines 5-9 (“In the [event] of scarcity of resources, ... payment for services and resources may be used to define the overall value of each resource allocation decision.”); column 12, lines 62-64 (“The user can specify the cost he/she is willing to pay and an appropriately scaled stream will be provided by the server.”). One of skill in the art would understand “digital rights management,” as recited by Claims 6, 15, 27, 38, 45, 51, 58, and 66, to refer to measures for protecting the copyrights of digital media content by “enabling secure distribution and/or disabling illegal distribution of the content” – *e.g.*, “by encrypting the data so that it can only be accessed by authorized users or by marking the content with a digital watermark or similar method so that the content can not be freely distributed.” Definition of “DRM,” <http://www.webopedia.com/TERM/D/DRM.html>, accessed July 31, 2009. The measures described

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Filed: January 14, 2004
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by Chaddha are nowhere described as being means for copyright protection, but rather only relate to determining the optimal use of scarce network resources. Likewise, the mere fact that a network provider may charge users more for priority access when network resources are scarce is not relevant to whether the network provider is "receiving payment for the supplemental data that is greater than payment that is received for the multimedia data having a first resolution," as recited by Claims 7, 16, 28, 39, 46, 52, 59, and 67.

For at least these additional reasons, Appellant respectfully submits that Claims 6, 7, 15, 16, 27, 28, 38, 39, 45, 46, 51, 52, 58, 59, 66 and 67 are separately patentable.

"Real or Near-Real Time" Means "Substantially Real-Time"

Finally, the Final Office Action asserts in the Response to Arguments section that "the limitation claiming 'step of performing in real time or near real' is considered to be an alternative language." Final Office Action, page 2. Appellant respectfully submits that "real or near-real time" is a unitary phrase used in the present claims to mean "substantially real-time," as Appellant recognizes that the transmission or reception of data may be subject to a time lag that renders it technically not "real-time," but still, for practical purposes, indistinguishable from real-time transmission or reception. To the extent that the present rejections are premised on a construction other than that described above, Appellant respectfully requests reversal of such rejections.

Conclusion

For at least the foregoing reasons, Appellant respectfully requests that the present application be reviewed, and that the rejection of all claims be reversed by the appeal conference prior to the filing of an appeal brief.

Respectfully submitted,



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